



6-27-05

RCE
\$ 21W

Approved for use through xx/xx/xxxx. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

Subsection (b) of 35 U.S.C. § 132, effective on May 29, 2000,
provides for continued examination of an utility or plant application
filed on or after June 8, 1995.
See The American Inventors Protection Act of 1999 (AIPA).

Application Number	09/426,011
Filing Date	October 25, 1999
First Named Inventor	Michael Simons
Group Art Unit	1654
Examiner Name	Roy Teller
Attorney Docket Number	BIS-043/CIP

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application.

NOTE: 37 C.F.R. § 1.114 is effective on May 29, 2000. If the above-identified application was filed prior to May 29, 2000, applicant may wish to consider filing a continued prosecution application (CPA) under 37 C.F.R. § 1.53 (d) (PTO/SB/29) instead of a RCE to be eligible for the patent term adjustment provisions of the AIPA. See Changes to Application Examination and Provisional Application Practice, Interim Rule, 65 Fed. Reg. 14865 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office 47 (Apr. 11, 2000), which established RCE practice.

1. Submission required under 37 C.F.R. § 1.114

- a. ☐ Previously submitted
- i. ☐ Consider the amendment(s)/reply under 37 C.F.R. § 1.116 previously filed on _____
(Any unentered amendment(s) referred to above will be entered).
- ii. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- iii. ☐ Other _____
- b. ☒ Enclosed
- i. ☒ Amendment/Reply 06/29/2005 BABRAHA1 00000035 09426011
- ii. ☐ Affidavit(s)/Declaration(s) 01 FC:2801 395.00 OP
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other _____

2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is requested under 37 C.F.R. § 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 C.F.R. § 1.17(i) required)
- b. ☐ Other _____

3. Fees

The RCE fee under 37 C.F.R. § 1.17(e) is required by 37 C.F.R. § 1.114 when the RCE is filed.

- a. ☐ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. _____
- i. ☐ RCE fee required under 37 C.F.R. § 1.17(e)
- ii. ☐ Extension of time fee (37 C.F.R. §§ 1.136 and 1.17)
- iii. ☐ Other _____
- b. ☒ Check in the amount of \$ 395.00 [FY 2005] enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	David Prashker	Registration No. (Attorney/Agent)	29,693
Signature	<i>David Prashker</i>	Date	June 24, 2005

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner For Patents, Box RCE, Washington, DC 20231, or facsimile transmitted to the U.S. Patent and Trademark Office on:

Name (Print/Type)		Date	
Signature			

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND Fees and Completed Forms to the following address: Commissioner for Patents, Box RCE, Washington, DC 20231.



"Express Mail mailing label number EU 339506462 US

Date of
Deposit JUNE 24, 2005

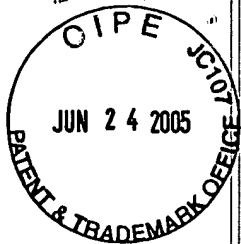
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 C.F.R. 1.10 with the mailing label number and the date indicated above, and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

David Prashker

(Typed or printed name of person mailing paper or fee)



(Signature of person mailing paper or fee)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Michael Simons & Youhe Gao
Serial No. : 09/426,011
Filed : October 25, 1999
For : "METHOD FOR PR-39 PEPTIDE REGULATED
STIMULATION OF ANGIOGENESIS"
Examiners : Roy Teller & Christopher R. Tate
Group Art Unit : 1654
Attorney's Docket No. : BIS-043/CIP

AMENDMENT AND RESPONSE SUBMITTED PURSUANT
TO 37 C.F.R.1.114 IN SUPPORT OF THE
REQUEST FOR CONTINUING EXAMINATION

Commissioner for Patents
P.O. Box 1450
Mail Stop: RCE
Alexandria, Virginia 22313-1450

Sir:

As part of the documents supporting the instant Request For Continuing Examination filed herewith in the U.S. Patent Office, applicants respectfully present their substantive Response in full to the most recently received (final) Official Action mailed January 19th, 2005, as extended through July 19th, 2005, for the above-identified application.

As a matter of substantive right, therefore, applicants hereby amend presently pending independent claim 11; cancel dependent claim 12, without prejudice; and add new dependent claims 15 and 16 respectively for the instant application.

In addition, in view of the explicit holdings rendered by the U.S. Supreme Court in the *Festo* case recently decided on May 28, 2002 [*Festo Corp. v. Shoketsu Kinzoku Kabushiki Co. Ltd. et al.*, 62 U.S.P.Q.2d 1705 (2002)] concerning the applicability of the legal doctrine of equivalents to amended claim language, applicants now present a formal attestation and affirmation of their legal position and substantive rights: Applicants do not now surrender for any reason, nor have previously surrendered at any time or for any reason during the prosecution of the instant application, any inventive subject matter which is or could be expected to be a particular equivalent of the invention defined by the language of the amended claims then pending by a person ordinarily skilled in this art; and that no presumption of estoppel, either in law or equity, exists or pertains now or at any time previously as a potential bar to the application of the doctrine of equivalence for any and all possible embodiments which may be found to be encompassed now or in the future by the language of the amended claims proffered now or at any time previously for examination to the U.S. Patent Office. Accordingly, applicants affirmatively rebut and explicitly dispute any presumption that the doctrine of equivalence for the language of the amended claims has been surrendered or is not in full force for any reason and at any time during the prosecution for any and all amended claims

prosecuted for the instant application.

Also, in accordance with the revised amendment practice (which became compulsory on July 30th, 2003), applicants now present a listing of all the claims in ascending numerical order which were ever submitted for review; and include an identification of those cancelled or withdrawn claims which were previously submitted as well as the full text of the claims currently pending in the instant application. The listing of all claims and the full text of the presently pending claims begins on the immediately following page.